

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
KAZH License, LLC)	
)	CSR-6226-M
v.)	
)	
Cable One, Inc.)	
)	
Request for Carriage of KAZH-TV)	
(Channel 57), Baytown, Texas)	

MEMORANDUM OPINION AND ORDER

Adopted: December 18, 2003

Released: December 22, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. KAZH License, LLC (“KAZH License”), licensee of television broadcast station KAZH-TV, (Channel 57) Baytown, Texas (“KAZH”), filed the above-captioned must carry complaint pursuant to Sections 76.7 and 76.61(a)(3) of the Commission’s rules, asserting mandatory rights for KAZH on Cable One, Inc.’s (“Cable One”) cable system serving Port Lavaca, Texas.¹ KAZH License requests that the Commission order Cable One to commence carriage of KAZH on the cable system in question.² Cable One filed an opposition to which KAZH replied.

II. BACKGROUND

2. Under Section 614 of the Communications Act of 1934, as amended (“Communications Act”), and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, (“*Must Carry Order*”), commercial television broadcast stations, such as KAZH, are entitled to assert mandatory carriage rights on cable systems located within the station’s market.³ A station’s market for this purpose is its “designated market area,” or DMA, as defined by Nielsen Media Research.⁴ The term DMA is a

¹ Complaint at 1.

² *Id.*

³ 8 FCC Rcd 2965, 2976-2977 (1993).

⁴ Section 614(h)(1)(C) of the Communications Act, amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications that delineate television markets based on viewing patterns. *See* 47 U.S.C. § (continued...)

geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to carriage.⁵ One method of doing so is for the cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to the cable system's principal headend.⁶ For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's headend is -45 dBm.⁷ Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights. Under the Commission's rules, a television station, at its own expense, may provide a cable operator with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁸

III. DISCUSSION

4. In support of its complaint, KAZH states that it is a full power commercial station operating on channel 57, and licensed to Baytown, Texas, which is in the Houston, Texas DMA.⁹ It states further that Cable One's Port Lavaca cable television system is also located in the Houston, Texas DMA.¹⁰ KAZH contends that because it is located within the same DMA as the Cable One system serving Port Lavaca, Texas, it is entitled to must carry status on that cable system.¹¹ KAZH asserts that on September 25, 2002, it informed Cable One of its must carry election for the cycle beginning January 1, 2003.¹² According to KAZH, because Cable One failed to begin carriage of the Station on January 1, 2003, it demanded mandatory carriage of its signal on Cable One's Port Lavaca system by letter mailed on May 5, 2003. Cable One failed to respond within 30 days, in writing, to such a demand.¹³ According to KAZH, it is committed to acquire, at its own expense, any necessary equipment to improve its signal and provide Cable One's Lavaca cable system with a good quality signal.¹⁴

5. Cable One asserts that KAZH does not qualify for mandatory carriage on its Port Lavaca cable system because KAZH fails to deliver a good quality signal to that headend, and that the Station has

(...continued from previous page)

534(h)(1)(C). Section 76.55(e) of the Commission's rules requires that a commercial broadcast station's market be defined by Nielsen Media Research's DMAs. *See* 47 C.F.R. § 76.55(3).

⁵ *See Must Carry Order*, 8 FCC Rcd at 2991.

⁶ 47 C.F.R. § 76.55(c)(3).

⁷ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

⁸ *Must Carry Order*, 8 FCC Rcd at 2991.

⁹ Complaint at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 3.

been notified of this on at least two different occasions.¹⁵ According to Cable One, in early October, 2002, its Port Lavaca system manager spoke with a representative of KAZH and told him that the Station's signal at the system headend at issue was inadequate.¹⁶ Cable One states that the second time KAZH was informed of its inability to deliver a good quality signal to the Port Lavaca headend was in a letter dated August 4, 2003 when the Station was told that "the Cable One system in question could not pick up the signal at all."¹⁷ Cable One submitted a copy of the signal strength test it conducted in September 2003 to support its assertion that KAZH's signal is deficient.¹⁸ The signal strength test results, show readings between -57.54 dBm and -56.94 dBm.¹⁹ Cable One contends that because KAZH does not provide a good signal quality to the Port Lavaca headend, it does not qualify for mandatory carriage purposes and thus, the Commission should dismiss KAZH's complaint.²⁰ Cable One also maintains that KAZH's must carry complaint is untimely and subject to dismissal because it was filed more than 90 days after its demand for mandatory carriage.²¹ KAZH maintains that it timely filed its Complaint. In this regard, KAZH notes that its Complaint was filed within sixty days of Cable One's failure to respond to KAZH's demand for carriage.²²

6. We grant KAZH License's must carry Complaint conditioned upon KAZH delivering a good quality signal to Cable One's principal headend located in Port Lavaca, Texas. We note that Section 76.61(5)(ii) of the Commission's rules states that the Commission will not accept a must carry complaint that is filed more than sixty days after a cable operator's failure to respond, in writing, to a broadcaster's notification of the operator's failure to carry a station. In this case, Cable One had 30 days to respond, in writing, from the date it received KAZH's demand for carriage, KAZH had sixty days to file a must carry complaint thereafter, which it did on August 1, 2003. KAZH maintains that it is committed to do whatever is necessary to improve its signal to Cable One's Port Lavaca, Texas headend. The Commission has stated that specialized equipment may be employed to deliver a good quality signal to a cable system headend. The Commission, in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues Clarification Order* ("Must Carry Clarification Order"), after re-emphasizing that it was the television station's obligation to bear the costs associated with delivering a good quality signal to the system's principal headend, stated: "[t]his may include improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with the signal strength requirements..."²³ KAZH maintains that it is committed to acquire and install all the equipment needed to deliver a good quality signal to Cable One's Port Lavaca principal headend. In view of the above, we grant KAZH's complaint.

¹⁵ Opposition at 2 and Exhibit 1.

¹⁶ Opposition at 1.

¹⁷ *Id.* at 2.

¹⁸ Exhibit D.

¹⁹ *Id.* We note that the signal strength was computed at the antenna, not at the input to the first active device.

²⁰ Opposition at 4.

²¹ Opposition at n.2.

²² *Id.* at 5.

²³ *Must Carry Clarification Order*, 8 FCC Rcd 4142, 4143 (1993).

IV. ORDERING CLAUSES

7. Accordingly **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the complaint filed by KAZH License, LLC **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that Cable One **SHALL COMMENCE CARRIAGE** of television station KAZH-TV on its cable system serving Port Lavaca, Texas, within 60 days from the date that Station KAZH delivers a good quality signal to Cable One's Port Lavaca, Texas headend.

9. **IT IS FURTHER ORDERED** that KAZH shall notify Cable One, in writing, of its channel position election on the Port Lavaca, Texas cable system within thirty (30) days of the date it provides a good quality signal, pursuant to Sections 76.57 and 76.64 of the Commission's rules.²⁴

10. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁵

FEDERAL COMMUNICATIONS COMMISSION

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²⁴ 47 C.F.R. §§ 76.57 and 76.64(f).

²⁵ 47 C.F.R. § 0.283.